

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Model Design Agreement

1. Reference CECW-AG memorandum, dated 3 December 1996, subject: Model Agreement for Preconstruction Engineering and Design (PED).

2. Effective 1 October 1998, the enclosed model Design Agreement (enclosure 1) shall be used for all Preconstruction Engineering and Design (PED) activities funded by General Investigations (GI) appropriations and all Engineering and Design (E&D) activities funded by either Construction, General (CG) appropriations or Operations and Maintenance, General (O&M) appropriations through execution of a project cooperation agreement (PCA), except as follows:

a. PED and E&D for a non-cost shared project or Dam Safety Assurance Program (DSAP) and major rehabilitation of dams projects.

b. PED initially funded prior to FY 1997 or E&D initially funded prior to FY 1998.

c. PED or E&D already covered by an agreement for design activities or PCA with a non-Federal sponsor executed before 1 October 1998.

d. E&D with total costs through execution of the PCA of less than \$100,000, if PED for the project was initially funded prior to FY 1997 or is already covered by a Federal/non-Federal agreement for design activities or PCA executed before 1 October 1998.

e. Continuing Authority Programs (Sections 14, 103, 107, 111, 205 and 208), Environmental Restoration Programs (Sections 204, 206 and 1135), and Environmental Infrastructure Programs (Sections 101, 303, 304, 313, 340, 510, 531, 552 and 566) with program specific E&D cost sharing requirements.

3. Until the Design Agreement is executed, the district shall not initiate any design work, or issue the solicitation for a contract for design work. In order to prevent delays in initiation of PED or E&D, the following guidelines should be followed for negotiation of the Design Agreement.

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a. Budgeted PED starts: Formal negotiations should not begin until plan selection has been agreed to by the Headquarters Program Manager during the Feasibility Review Conference, Alternative Formulation Briefing, or similar method. If PED funds have been allocated to the district, these funds may be used to negotiate the Design Agreement, including negotiations conducted prior to the scheduled release of the Division Engineer's Public Notice. The Government's PED costs incurred for negotiation of the Design Agreement will be included in total design costs and shared in accordance with the terms of the Design Agreement.

b. PED or E&D Congressional Adds: Formal negotiations should not begin until the scope of the congressional add has been discussed at the video teleconference (VTC) on congressional adds. If a Project Study Plan (PSP) or a Project Management Plan (PMP) has not already been developed, a PSP or PMP, as appropriate, should be developed using the PED or E&D funds allocated to the district. The Government's PED or E&D costs incurred for preparation of the PSP or PMP and negotiation of the Design Agreement will be included in total design costs and shared in accordance with the terms of the Design Agreement.

4. The following procedures should be used for review and approval of a Design Agreement.

a. Design Agreements with no deviations from model. The responsibility for review, certification of proper application of the model, and notification of authority to execute the agreement is delegated to the MSC. In accordance with procedures established by the division commander, district commanders are authorized to execute Design Agreements, regardless of the project purpose, that do not deviate from the model and optional language. Three copies of notification of intent to execute the Design Agreement with no deviations; the Design Checklist (enclosure 2); Federal/non-Federal funds allocation table; Certificate of Legal Review; and letter of intent from the sponsor should be forwarded to the MSC at least 30 days prior to the scheduled date for execution of the Design Agreement.

b. Design Agreements with deviations from the model. For those design agreements that do deviate from the model, six copies of the draft Design Agreement; list of deviations from the model and detailed reasons for the deviations; Certificate of Legal Review; Design Checklist (enclosure 2); Federal/non-Federal funds allocation table; letter of intent from the sponsor; and one copy of the decision document should be forwarded to CECW-AR for review and approval by the Office of the Assistant Secretary of the Army (Civil Works). At minimum of 60 days

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should be allowed for review and approval of agreements forwarded to CECW-AR.

c. After execution of the Design Agreement. An electronic copy and photocopy of the executed agreement shall be provided to CECW-AR NLT 21 days after execution of the agreement.

5. The approved model Design Checklist and a link to the Office of Chief Counsel's homepage for the approved model Design Agreement is located at:

<http://www.usace.army.mil/inet/functions/cw/cecwa/pcapage.htm>

6. The POC for all questions relating to the model Design Agreement is Alan Lauwaert (202) 761-0125.

FOR THE COMMANDER:

/s/

Encl

RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works